Application No. 09/945,200
Amendment dated Apr. 5, 2005
Reply to Office action of January 5, 2005

Amendments to the Drawings:

The attached sheet of drawings includes changes to FIG. 3A. This sheet, which includes FIG. 3A and FIG. 3B, replaces the original sheet including FIG. 3A and FIG. 3B. In FIG. 3A, the legend "Prior Art" has been added.

Attachment: Replacement Sheet

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REMARKS

Claims 1-33 are pending in the application.

The Examiner objected to the drawings and requested that FIG. 3A be designated by a legend stating that FIG. 3A is prior art. Applicant has amended the sheet containing FIG. 3A. The enclosed amended sheet is labeled with "Replacement Sheet". It is therefore respectfully requested that the objection be withdrawn with respect to the drawings.

Claims 1-33 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Publication No. 2002/0187799 A1 ("the Haartsen patent"). Applicant respectfully traverse the rejection as set forth below.

Applicant respectfully draws the attention first to claim 7, as originally filed, which recites "wherein an access code portion of outgoing transmissions sent by the wireless communications device is reserved to notify the second wireless communications device that the outgoing transmissions have an increased level of error-correcting coding". The Office Action alleges that claim 7 is anticipated by the Haartsen patent at paragraph [0017]. Applicant has carefully reviewed paragraph [0017] and can find no reference to an access code portion of an outgoing transmission that is reserved to notify a second wireless communications device. Thus, the Haartsen patent does not anticipate claim 7 because the Haartsen patent does not describe each and every element as set forth in claim 7. Accordingly, the anticipation rejection cannot be maintained with respect to claim 7 in view of the Haartsen patent. In fact, paragraph [0017] of the Haartsen patent states the performance parameter of the communication channel is measured at the second wireless communications device. Thus, in the Haartsen patent, there is no need to notify the second wireless communications device since it is the first to know about the performance parameter of the communication channel.

To expedite the prosecution of the present application, Applicant has amended independent claims 1, 12, 21, 27 and 30 to include some elements that may be the same as or may be similar to or may be different from the elements in claim 7 to place the pending claims in condition for allowance. Although Applicant is amending claims 1, 12, 21, 27 and 30, Applicant reserves the right to argue, in the future, the patentability of the elements recited therein.

Applicant respectfully submits that the elements recited in claims 1, 12, 21, 27 and 30 are not described in the Haartsen patent and thus claims 1, 12, 21, 27 and 30 are not anticipated by

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the Haartsen patent. It is therefore respectfully requested that the rejection under 35 U.S.C. § 102(e) based on the Haartsen patent be withdrawn with respect to claims 1, 12, 21, 27 and 30 and their pending dependent claims (i.e., claims 2-6 and 8-11, claims 13-15 and 17-20, claims 24-26, claims 28 and 29, and claims 31-33, respectively).
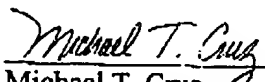
Applicant has cancelled, without prejudice, claims 7, 16, 22 and 23.

Applicant has amended claims 8, 17, 24 and 29 for noted informalities in view of the amendments to claims 7, 16, 22 and 23.

The Commissioner is hereby authorized to charge additional fees or credit overpayments to the deposit account of McAndrews, Held & Malloy, Account No. 13-0017.

Date: April 5, 2005   Respectfully submitted,

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